

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION OF)
VERIZON DELAWARE INC., FOR APPROVAL)
TO CONTINUE TO BE REGULATED IN)
ACCORDANCE WITH THE TERMS OF THE) PSC DOCKET NO. 05-009
TELECOMMUNICATIONS TECHNOLOGY INVEST-)
MENT ACT FOR AN ADDITIONAL FIVE YEARS)
(FILED APRIL 18, 2005))

ORDER NO. 6646

This 7th day of June, 2005, the Commission determines and Orders the following:

1. More than a decade ago, in 1994, Verizon Delaware Inc. ("VZ-DE") elected¹ to have the prices and rates for its telecommunications services determined under the regulatory regime set forth in the "Telecommunications Technology Investment Act," 26 Del. C. §§ 704-11 ("TTIA"). VZ-DE's election was to continue for at least five years. Beginning a year before the end of that "initial" term, the Commission would then conduct a comprehensive proceeding to determine whether VZ-DE should continue to be governed by the TTIA or instead be subject to some other form of regulation. See 26 Del. C. § 704(b). Yet, when the time came in 1998 for such comprehensive review to begin, everyone understood that the telephone world had significantly changed since the TTIA's enactment in 1993. The 1996 federal Telecommunications Act had "federalized" a wide swath of telecommunications regulation (particularly as between incumbent and

¹See 26 Del. C. § 704(a). In 1994, VZ-DE was Diamond State Telephone Company.

new competitive carriers). The ambitious goal of this federal law was to introduce competition into the local exchange market in the very near term. To allow time for this regulatory sea-change to play out, the Commission twice "extended" the term of VZ-DE's "initial" election under the TTIA. First, in 1998, the Commission lengthened the initial term from five to eight years.² Then, in 2001, the term's expiration date was further moved back either for an additional three years or, at least, until 12 months after VZ-DE might receive authority to provide interLATA services.³ In both cases, the extensions postponed the review process called for by 26 Del. C. § 704(b).

2. VZ-DE received interLATA authority in 2002. Under the terms of the last extension Order, that triggered the one-year § 704(b) review process. See PSC Dckt. No. 02-026. But as that docket progressed, it became apparent that uncertainty still surrounded telecommunications markets. The governing federal legal rules about carrier-to-carrier obligations were still mired in full-court litigation and robust pervasive competition had not yet emerged. Consequently, the parties in that docket (via a settlement approved by the Commission) resolved the review process by directing that the TTIA regime would continue to govern VZ-DE's services in Delaware for an additional three years (until September 23, 2006). PSC Order No. 6261 (Sept. 9, 2003).

3. In April 2005, VZ-DE filed a petition asking that the Commission push back termination date for the resolution approved in

²PSC Order No. 4759 (Mar. 24, 1998).

³PSC Order No. 5710 (Apr. 24, 2001).

Order No. 6261 for another five years (until 2011), but with the caveat that VZ-DE would have the right to come in and propose for the Commission's consideration a differing regulatory regime to govern its operations at any time during this extended term. At heart, under VZ-DE's petition, the TTIA would continue to govern VZ-DE's operations until 2011, unless VZ-DE would later successfully petition for some other regulatory or de-regulatory regime to control.

4. The Commission directed notice of VZ-DE's extension request to be provided to the public and other carriers. PSC Order No. 6614 (May 10, 2005). The notices solicited other carriers and any interested persons or entities to submit objections to, or comments on, VZ-DE's petition. The Commission suggested that if no comments were forthcoming, the Commission might grant VZ-DE's request without further extensive proceedings. No one filed comments.

5. In light of the absence of objections or even comments, the Commission will grant VZ-DE's request and extend the termination date for the settlement approved in Order No. 6261 for an additional five years to September 23, 2011. The Commission finds such an extension to be in the public interest. First, no competing carrier has come forward to voice concerns that the continued application of the TTIA to VZ-DE past 2006 will affect the growth of competitive telecommunications markets in this State. Moreover, on the retail side, over the last five years, the TTIA has brought a degree of price stability to the rates charged to VZ-DE's customers in those categories (such as residential) where intramodel competition has failed to gain a significant beachhead. Moreover, uncertainty still

surrounds the market for telecommunications markets. Litigation over the rules relating to network sharing might now have subsided, but the new rules are much different from those that prevailed in 1998 or 2003. Moreover, Internet-Enabled services including Voice over Internet Protocol, have now emerged as the new platform for offering a wide range of communication services across most, if not all, customer categories. Yet, such IP-enabled services, although touted as the wave of the future, are far from ubiquitous. At the same time, proposed mergers (including one between VZ-DE's parent and its former competitor MCI)⁴ will, if approved, significantly change the players, as well as the play, in the area of communications services to larger, "enterprise" consumers. If the Commission were to launch a second round of § 704(b) review to begin September 2005, it would only be engaged in speculation about how the telecommunications world will look after 2006. Better, the Commission thinks, to now extend the Order No. 6261 resolution (and the TTIA regime) for five years, but with an "escape" process to allow the Commission to revisit the appropriate regime for VZ-DE if in the (now uncertain) future it appears that continued application of the TTIA might work to cause competitive or consumer harm.⁵

⁴See PSC Dckt. No. 05-81 (petition for Verizon Communications to acquire control of MCI operating entities).

⁵In its petition, VZ-DE asks that it be granted the right, during the extended term, to return to ask the Commission to adopt an alternative regulatory or de-regulatory regime. The Commission grants such a reservation of authority to VZ-DE. At the same time, by now allowing VZ-DE to later petition for a change, the Commission is not foreclosing it from later revisiting the appropriate regulatory regime for VZ-DE on its own motion. Similarly, nothing here is meant to prevent other carriers, or the Public Advocate, from later asking the Commission to return to the issue if, due to

6. Lastly, the Commission emphasizes that this extension was sought by VZ-DE, not imposed by the Commission. VZ-DE has, by its petition, voluntarily chosen to extend the time it must live by the requirements imposed by the TTIA and the Commission's implementing regulations.

Now, therefore, **IT IS ORDERED:**

1. That the letter application filed by Verizon Delaware Inc., on April 18, 2005, requesting that the resolution adopted in PSC Order No. 6261 (Sept. 9, 2003) be extended for an additional five years, until September 23, 2011, but with the opportunity of Verizon Delaware Inc., to propose to the Commission for its consideration an alternative regime for regulation during such extended time, is hereby granted. As set forth in the settlement approved in PSC Order No. 6261 (Sept. 9, 2003), Verizon Delaware Inc., shall continue to be governed by the provisions of 26 Del. C. §§ 704-711 and the Commission's implementing regulations until September 23, 2011, subject to the opportunity described above for Verizon Delaware Inc., to request, during such period, that the Commission approve an alternative method of regulation. The following text found in paragraph 14 of the Settlement attached to PSC Order No. 6261 (Sept. 9, 2003) is amended to read as follows:

Verizon will continue to be governed by the TTIA for an additional term, namely through September 23, 2011. Verizon shall notify the Commission, in writing, no later than September 23, 2010, whether it wishes to

later circumstances, they might be able to demonstrate harm from the continued application of the TTIA from 2006 through 2011.

continue to be governed by the TTIA after September 23, 2011, and, if so, how long.

The remainder of such paragraph 14 shall continue in effect. Further, the terms of the settlement are further amended to allow Verizon Delaware Inc., to file, at any time prior to September 23, 2011, a petition or other application proposing a differing alternative method of regulation, or de-regulation, for the Commission's consideration.

2. That the Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

/s/ Arnetta McRae
Chair

/s/ Joshua M. Twilley
Vice Chair

/s/ Joann T. Conaway
Commissioner

/s/ Dallas Winslow
Commissioner

/s/ Jaymes B. Lester
Commissioner

ATTEST:

/s/ Karen J. Nickerson
Secretary